

Meighen Haddad LLP

LAW FIRM

Why due diligence is important when buying a home

by: Shawn Eisler, Associate
published October 25, 2024

As a prospective homebuyer, the excitement of finding your dream home can often overshadow the need for thorough due diligence. Beyond the basic groundwork of evaluating the neighbourhood, understanding property taxes, and assessing local amenities and services, there are certain legal considerations that buyers must also be aware of.

In Manitoba, our legal system still operates based on the principle of "buyer beware". This means that it is the buyer's responsibility to discover any defects or issues with a property before completing the purchase. It also means that sellers are not obligated to disclose all potential problems with the home, placing the onus on the buyer to conduct their own investigations.

One of the most critical steps in the due diligence process is arranging a comprehensive home inspection, and buyers should ensure to include a home inspection clause in any Offer to Purchase that they make. That way, if the seller accepts an offer, the buyer will have a chance to complete a home inspection prior to closing the deal.

A qualified home inspector can identify structural issues, electrical problems, plumbing defects, and other potential hazards that may not be visible during a casual viewing. Under Manitoba's buyer beware system, failing to conduct an inspection could lead to significant expenses down the road, as undiscovered issues can affect the safety and value of a new home.

In addition to getting a home inspection, it is important for buyers to make other inquiries about their potential home. As mentioned before, sellers are not under an obligation to disclose every single defect with the home. However, if a seller is asked a question regarding the home, they cannot give a false answer. For this reason, buyers should make sure they ask questions to reveal as much information as possible.

One way of doing this is by having the seller fill out a "Property Disclosure Statement" which is a simple questionnaire designed to give buyers notice of any material issues to the home. When filling out a Property Disclosure Statement the seller will be asked many questions such as "Are you aware of any roof leakage?",

“Are you aware of any structural issues?” or “Are you aware of any rodent or insect infestation?”. If the seller answers yes to any of these questions, they will have to provide an explanation for their answer. Similar to a home inspection, the standard Offer to Purchase form that buyers complete with their realtor will include a clause stating that the transaction is subject to a satisfactory Property Disclosure Statement, giving the buyer the opportunity to back out of the deal if they are not satisfied with any of the answers.

Apart from due diligence related to the physical integrity of the home, there are many intangible details that real estate lawyers will investigate to ensure that the title to the home is clear and transferable. A title search will reveal the ownership history of the property, confirming that the seller has the legal right to sell it. This process will also uncover any encumbrances, such as mortgages, liens, caveats, or easements that may affect ownership.

Moreover, buyers should verify zoning regulations and land use by-laws applicable to the property. This ensures that any intended modifications or renovations are permissible under local laws, protecting buyers from potential fines or legal disputes in the future.

Lastly, it is very important to carefully review your Offer to Purchase before signing. This document outlines the terms and conditions of the sale, and any ambiguities or unclear clauses could lead to disputes later. For this reason, it is important to work closely with a real estate professional, as they can help ensure that the agreement accurately reflects your understanding of the transaction and safeguards your interests.

In brief, due diligence is an essential component of the home-buying process, particularly in Manitoba’s buyer beware environment. Taking the time to conduct thorough home inspections, perform legal checks, and careful reviews of agreements can prevent costly mistakes and ensure a smoother transaction. By being proactive and informed, buyers can protect their investment and make the home-buying experience a positive one.

DISCLAIMER: *This article is written for informational purposes only and does not constitute legal advice. The views expressed are solely the author’s and should not be attributed to any other party, including Meighen Haddad LLP. If you want to seek legal advice, please contact the author directly or call our office at (204) 727-8461.*

The Author:

SHAWN EISLER
Associate
seisler@mhlaw.ca
204.717.1458